

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADAM LIMBRICK,

Petitioner,

vs.
DOMINGO URIBE, JR.; EDMUND G.
BROWN, JR.,

Respondents.

CASE NO. 10-CV-2376 JLS (MDD)

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION;
(2) DENYING RESPONDENT'S
MOTION TO DISMISS; AND
(3) DISMISSING UNEXHAUSTED
CLAIM**

(ECF Nos. 9, 14)

Presently before the Court is Respondent Domingo Uribe, Jr.'s motion to dismiss Petitioner Adam Limbrick's petition for writ of habeas corpus. (ECF No. 9.) Also before the Court is Magistrate Judge Mitchell D. Dembin's report and recommendation advising the Court to deny Respondent's motion. (R&R, ECF No. 14.)

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court's duties in connection with a magistrate judge's report and recommendation. The district court must "make a de novo determination of those portions of the report to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely objection, the Court "need only satisfy itself that there is no clear error on the face of the record in

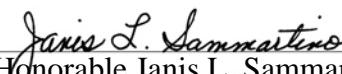
1 order to accept the report and recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing
2 *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United States v. Reyna-*
3 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(“[T]he district judge must review the magistrate judge’s
4 findings and recommendations de novo *if objection is made*, but not otherwise.”)

5 Here, Respondent failed to timely object to Magistrate Judge Dembin’s report and
6 recommendation. *See* Fed. R. Civ. P 72(b) (“Within 14 days after being served with a copy of the
7 recommended disposition, a party may serve and file specific written objections to the proposed
8 findings and recommendations.”); R&R (filed June 29, 2011). Having reviewed the report and
9 recommendation, the Court finds that it is thorough, well reasoned, and contains no clear error.
10 Accordingly, the Court (1) **ADOPTS** Magistrate Judge Dembin’s report and recommendation and
11 (2) **DENIES** Respondent’s motion.

12 In addition, Magistrate Judge Dembin gave Petitioner until July 8, 2011 to object to the
13 dismissal with prejudice of the unexhausted claim contained in his petition. (R&R 5; *see id.* at 3
14 (“Petitioner concedes in his Opposition to Respondent’s Motion to Dismiss that his Petition contains
15 an unexhausted claim.”).) To date, he has not taken any action on the unexhausted claim.
16 Accordingly, Petitioner’s unexhausted claim is **DISMISSED WITH PREJUDICE**.

17 **IT IS SO ORDERED.**

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19 DATED: July 29, 2011

20 
21 Honorable Janis L. Sammartino
United States District Judge

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